Supreme Court, U.S.
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Supreme Court of the United States

October Term, 1998

MICHAEL J. McEACHERN,
Petitioner,

vs.

JOHN T. BLACK
Respondent.

On Petition for Writ of Certiorari to the Court of Appeals for South Carolina

PETITION FOR WRIT OF CERTIORARI

MICHAEL J. McEACHERN, *pro se*
1114 12th Street
Port Royal, S.C. 29935
(843) 524 1679
Petitioner

38pp

QUESTION PRESENTED

Whether the judicial immunities defined in existing case law can be enlarged to the extent effected in the *McEachern v. Black* decision without violating the intention of the Court in those cases.

PARTIES TO THE PROCEEDING BELOW

The parties before this Court are those whose names are set forth in the caption.

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PETITION FOR WRIT OF CERTIORARI

Michael J. McEachern respectfully petitions for certiorari to review the judgment and opinion of the South Carolina Court of Appeals in *Michael J. McEachern v. John T. Black.*

OPINIONS BELOW

The Honorable Henry L. McKellar, as Presiding Judge for the Fourteenth Judicial Circuit of South Carolina, executed an Order of Dismissal on June 27, 1996. Judge McKellar concluded that Respondent John T. Black was protected from Petitioner's suit for damages by judicial immunity. That Order is reprinted here in Appendix at 9a - 15a. The opinion of the South Carolina Court of Appeals, filed January 26, 1998, is reported at 496 S.E.2d 659, and is reprinted in the Appendix here at 1a - 8a. A Petition for Rehearing was denied by the Court March 19, 1998, and the Order so denying is reprinted in the Appendix here at 22a. The Supreme Court of South Carolina was petitioned for Writ of Certiorari, and that petition was denied November 19, 1998. That Order is reprinted in the Appendix at 23a.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. §1257 (a).

As the Order of the South Carolina Supreme Court denying certiorari was dated November 19, 1998, this petition is timely filed.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the Constitution of the United States: Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

42 U.S.C. § 1983 provides in relevant part that "[e]very person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law..."

STATEMENT OF THE CASE

A. Background

Petitioner Michael J. McEachern manages The Roof Doctor, Inc., ("The Roof Doctor") a small construction firm specializing in metal roofing. He has since 1991 also acted as the director of a not-for-profit interest group, CourtWatch, which has as its purpose "the rehabilitation of South Carolina's legal profession and judiciary." In paid ads as well as in correspondence with representatives of the legal profession and judiciary, the tone of CourtWatch is harsh.

Respondent John T. Black is a retired family court judge. At the time of the incident which led to the case here, he was already retired, but was serving on the bench under some special arrangement, presumeably because of the chronic overload family courts face. Over the years he and petitioner had had numerous differences of opinion; on occassion those differences resulted in respondent's jailing petitioner for contempt of court. The contempt and disagreement had been over failure to obey an order for child support. Petitioner read the Support Guidelines to give an out-of-work parent, unless there was some indication the unemployment was intentional, a non-contemnor status; the judge read them differently.

Bernard Jamerson was at the time of the incident which led to this matter a young employee of The Roof Doctor. He was living without electricity and with a blue poly tarp keeping rain out of his "trailer house," heating with the propane cook stove.

On or about October 3, 1995, Jamerson requested that McEachern write a letter to South Carolina Department of Social Services ("DSS") explaining that The Roof Doctor did not offer health insurance to its employees. DSS, through one Vernee C. Hancock, was threatening to bring Jamerson before the Family Court on contempt charges for not providing his children with health insurance as he had been ordered. Even with the letter written, though, Jamerson would likely have to miss a good part of a day to take care of the matter. The letter which McEachern wrote Ms. Hancock was childish and exceedingly uncomplementary.

B. Procedural History

This action was commenced by the filing of a Summons and Complaint with the Colleton County Clerk of Court on March 6, 1996. Plaintiff, the Petitioner herein (McEachern), alleged that the Defendant John T. Black, while sitting as the Presiding Judge of the Beaufort Count Family Court, and particularly while Judge Black was presiding at a hearing in *South Carolina Department of Social Services v. Jamerson* (87-DR--07-538), issued a Rule to Show Cause directing McEachern to appear to be heard at a contempt hearing. The Complaint alleged five separate claims, four state tort claims and one federal constitutional claim, all arising from Judge Black's issuance of the Rule to Show Cause, and sought money damages from John T. Black personally. (Complaint is reprinted here in the Appendix at 16a - 21a.)

On March 20, 1996, the Defendant Black filed a Notice of Motion and Motion to Dismiss asserting that Plaintiff's action was barred by common law judicial immunity and the statutory immunities of the South Carolina Tort Claims Act. The Motion also requested that the trial court take judicial notice of the Beaufort County Family Court records in *South Carolina Department of Social Services v. Jamerson* and *Family Court of Beaufort County v. McEachern.*

On May 22, 1996, Judge Black's Motion to Dismiss was heard by the Honorable Henry L. McKellar, Presiding Judge, Fourteenth Judicial Circuit. On May 31, 1996, Judge McKellar issued a Bench Order granting the Defendant's Motion to Dismiss, and instructing defense counsel to prepare a formal

order. That formal Order was executed by Judge McKellar on June 27, 1996, and filed July 2, 1996. (This Order is reprinted here in the Appendix at 9a -15a.) The Court of Common Pleas concluded that "[t]he prosecution of this action is barred by judicial immunity."

(Please note that while the Order claims that

> ...the Family Court records show that McEachern had, in fact, appeared before the court in the *Jamerson* matter, in his capacity as Jamerson's employer. Specifically, the file maintained by the Clerk of Court shows that McEachern had filed both a Notice of Withholding and a Payor/Employer's Answer regarding Jamerson's support obligation,

inspection of the Payor's Answer referred to shows the signature to be that of The Roof Doctor's office manager, Melissa McAlhaney, not Michael McEachern. Petitioner was never before the family court in this matter.)

The federal questions included in the Complaint were not addressed by the lower court or by the appellate courts, as the matter was foreclosed by dismissal.

REASONS FOR GRANTING THE WRIT

First, the importance of our courts to order depends on the respect of the people. If it comes to be generally believed that judges act without accountability, order will diminish.

Second, the reasoning found in the majority opinion in *Stump*, a controlling case in defining judicial immunity, is sloppy; disingenuousness is evident. If we must have a standard of judicial immunity as strong as *Stump*, let it be well articulated.

JUDGES MUST BE SEEN AS BEING IN SOME WAY ACCOUNTABLE TO LAWFUL PROCESSES. IN THIS CASE, JUDICIAL IMMUNITY IS EXTENDED TO ALLOW JUDGES SO DISPOSED TO PUNISH WITH IMPUNITY PARTIES NEVER BEFORE THEM FOR WHAT MOST WOULD TAKE TO BE ACTIONS PROTECTED BY THE FIRST AMENDMENT.

Case law has long underpinned the notion of judicial immunity as essential to the administration of justice, supporting the concept even against allegations of judicial malice and corruption. There are apparently only three exceptions to a judge's immunity from suit: "First, no judicial immunity exists if the judge acts in the 'clear absence of all jurisdiction.' *Stump v. Sparkman*, 435 U.S. 349, 357 (1978). Second, judicial immunity extends only to judicial acts. *Forrester v. White*, 484 U.S. 219 (1988). Finally, judges cannot claim judicial immunity for suits seeking only prospective, injunctive relief. *Pulliam v. Allen*, 466 U.S. 522 (1984)." *McEachern v. Black*, 329 S.C. 642, 648 (Ct.App. 1998). The first two were used to support Judge Black's position.

Examining these and the prior cases they reference, we find that the judicial immunity they describe does not apply to *McEachern v. Black*. Quoting from *Stump* (page 362):

> The relevant cases demonstrate that the factors determining whether an act by a judge is a 'judicial'

> one relate to the nature of the act itself i.e., whether it is a function normally performed by a judge, and to **the expectations of the parties, i.e., whether they dealt with the judge in his judicial capacity**." (Emphasis added.)

But McEachern did not deal with Black in his judicial capacity or any other capacity. In response to a request from an employee, he wrote a letter to an attorney and in that letter made comments disparaging the legal profession and judiciary of South Carolina.

Further, the *Stump* opinion cites with approval the reasoning of the Court of Appeals for the Fifth Circuit, which held judicial immunity protected a state district judge's irregular use of the contempt process, noting:

> Among the factors relied upon by the Court of Appeals in deciding that the judge was acting within his judicial capacity was the fact that 'the confrontation arose **directly and immediately out of a visit to the judge in his official capacity**.' (Emphasis added.) *McAlester v. Brown*, 469 F.2d 1280, 1282 (1972)

This was not the case in *McEachern v. Black.*

Indeed, the underlying rationale by which judicial immunity is justified cannot be said to apply in *McEachern v. Black.* Again from *Stump* (page 364), this time quoting from an 1872 case:

> Despite the unfairness to litigants that sometimes results, the doctrine of judicial immunity is thought to be in the best interests of 'the proper administration of justice [for it allows] a judicial officer, in exercising the authority vested in him [to] be free to act upon his own convictions without apprehension of personal consequences to himself.' *Bradley v. Fisher*, 13 Wall., at 347.

"[T]o act upon his own convictions" is the key phrase, and it is

not at all the same as "to do as he pleases," though the majority opinions of several immunity decisions come close to saying this. The license the courts have used is plausible: Allegations of maliciousness or corruption are easily made; they cannot be judged without trial; to have judges subjected to lawsuits from disgruntled litigants would make the system unworkable. But against this considerable good, the efficient and impartial administration of the courts, we must always weigh the public's right to accountability from their servants.

Accountability is not a creation of the law, but rather the other way around. Oliver Wendall Holmes put it succinctly: "The law is founded in vengeance." When the public's right to vengeance, or accountability, is diminished, there had better be something of value offered in exchange. In *McEachern v. Black* there is not. The letter which so incensed Judge Black was not addressed to him or to his court. The opinion of McEachern about the caliber of the State's legal profession and judiciary was entirely irrelevant to the proceedings before the court, and in fact need not have been offered to the judge by the attorney / addressee at all.

We may assume with perfect logical consistency that if the definition of judicial immunity used in *McEachern v. Black* is allowed to stand, hereafter persons may be cited for contempt for using, in correspondence with anyone at all, a font or format not favored by the presiding judge, so long as that correspondence contains some reference, however tenuous, to a matter before the court, and on some pretext or other finds its way into the courtroom. In fact, hereafter editorials disparaging a judge or even of the shortcomings of the judiciary generally, may result in contempt citations for the author and publisher, should there by chance be in the same paper some reference to an ongoing case. This is where the *Stump*'s "clear absence of all jurisdiction" test takes us in *McEachern v. Black*.

Until he was faced with a lawsuit for money damages, Judge Black himself felt he lacked jurisdiction, and had admitted so. In response to a letter from the A.C.L.U. pointing out Judge Black's lack of jurisdiction in the matter, the Judge, on November 30, signed a "Motion and Order for Dismissal" which stated that "based on the letter of November 20 from C. Rauch Wise,

[A.C.L.U.] Attorney, the Rule to show Cause dated October 13, 1995 is hereby dismissed."

In none of the cases cited was judicial immunity related to the possible dollar cost lof a judge's misdeeds.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

MICHAEL J. McEACHERN, pro se
1114 12th Street
Port Royal, S.C. 29935
(843) 524 1679